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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

~~44~~ OCTOBER TERM, 1939 ~~40~~

No. ~~885~~

52

THE UNITED STATES OF AMERICA, APPELLANT

vs.

MAY HARRIS, ALIAS KITTY HARRIS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY

FILED APRIL 12, 1940

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 905

THE UNITED STATES OF AMERICA, APPELLANT

vs.

MAY HARRIS, ALIAS KITTY HARRIS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY

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1 In United States District Court for the District of New Jersey

UNITED STATES OF AMERICA

v.

MAY HARRIS, ALIAS KITTY HARRIS, DEFENDANT

Indictment

Filed Oct. 17, 1939

In the District Court of the United States of America in and for the District of New Jersey, at the April Term thereof, in the year 1939.

The Grand Jurors of the United States of America duly impaneled, sworn, and charged to inquire in and for the body of the said District of New Jersey, upon their oaths present,

1. That beginning in April and continuing up to and including the 12th day of September in the year 1939, at the City of Newark in the State and District of New Jersey, Frank B. Merritt, Asher Atkinson, Robert S. Johnson, James O'Connor, William C. Glassmann, Mrs. Essie Abeel, Samuel D. Metz, Edward C. Kern, Harry S. Allen, Charles McNair, Leslie D. Tasney, Dr. William I. Reed, Frank Lenz, John H. Birkett, Douglas S. Schehck, Thomas J. Corydon, Miss Margery Quigley, Mrs. Ruth L. Ballou, J. Johnson Kenyon, Mrs. Lillian D. Davis, Rev. George D. Hulst, George Young, and Mrs. Henrietta H. Hawes, were and continued to be good and lawful men and women of the said District of New Jersey then and there duly impaneled, sworn, and charged to inquire in and for the body of the said District of New Jersey and then and there composed and were the lawfully constituted Grand Jury of the United States of America in and for the said District of New Jersey for the April Term 1939, of the said District Court of the United States therein, the April 1939, Term of service of the said Grand Jury having been on the 6th day of September in the year 1939 duly extended by order of Honorable Guy L. Fake, Judge of the said District Court, to from time to time and at such times as might be necessary and proper until the further order of the said Court, with full power and authority to hear and determine any matter brought before the said Grand Jury and to pass upon, find, sign, and return indictments and presentiments into Court as the said Grand Jury should determine proper and lawful in matters already heard or partly heard but which the said Grand Jury would be unable to finish and have presented before the expiration of the said April

1939, Term of the said District Court as otherwise provided by law;

2. That then and there and theretofore there was exhibited to and given in charge to inquire by the said Grand Jury the question of what persons, if any, were engaged in the conducting of houses of prostitution and the conducting of other illegal enterprises and businesses at and in the City of Atlantic City, in the County of Atlantic and said State and District; what income was received by the proprietors of the said enterprises and businesses and the expenses incurred by each and to whom paid; the names of the persons to whom said proprietors had paid moneys for any purpose whatever; whether the persons to whom they had paid moneys had filed false and fraudulent individual income tax returns or had filed no individual income tax returns with intent to defraud the United States, or had paid income taxes for less than was due the United States, or had paid no income tax whatever when income tax was due the United States, for all or any part of the years 1930 to 1938, both inclusive, with the view that the said Grand Jury might in all cases disclosed to them by the evidence find and return true bills of indictments for violations of income tax laws of the United States, proven by the testimony to have been committed in the said City of Atlantic City, as to them seemed necessary and proper;

3. That on the said 11th day of October in the year 1939, at the City of Newark, in the County of Essex and State and District of New Jersey and within the jurisdiction of this Court, the said Grand Jury being in lawful session and continuing their duties and inquiring of the matters and things more fully set out and described above and concerning which said person or persons, if any, had aided, abetted, and procured the filing of false and fraudulent income-tax returns, or had failed to file any income-tax returns whatever, with intent to defraud the United States of income tax for the years 1930 to 1938, both inclusive, or any or either of them, one May Harris, alias Kitty Harris, whose true and correct name, except as above set forth, is to the Grand Jurors unknown, came in her own proper person before the said Grand Jury then and there so in lawful session at the City of Newark aforesaid, as a witness into and concerning the inquiry then and there being conducted before the said Grand Jury in the matters aforesaid, and was duly sworn and took her corporal oath administered by William I. Reed, Foreman of the said Grand Jury, duly selected, named and appointed as such by the said Court, that the evidence which she, the said May Harris, should give before the said Grand Jury in the matter then depending would be the

truth, the whole truth and nothing but the truth, the said William I. Reed, as such Foreman of the said Grand Jury, having full power and authority and being a competent person to administer the said oath to the said May Harris in that behalf, the said inquiry before the said Grand Jury being a case in which a law of the United States authorized an oath to be administered and the said Grand Jury then and there inquiring as aforesaid;

4. That in the said inquiry by and before the said Grand Jury it then and there became and was, among other things, material matter and question and material and proper to be inquired into by the said Grand Jury,

(a) if houses of prostitution operated in Atlantic City, New Jersey, during the years 1932 to 1937, inclusive;

(b) whether the proprietors of the said houses of prostitution received any permission or assurance from any person holding any official position in Atlantic City or Atlantic County, or any other person, that they might conduct such businesses; the name of said person or persons and the particulars of said permission or assurance and the amounts necessary to be paid for the same;

(c) what amounts were actually paid by said proprietors for protection against raids, arrests or other molestation in the conduct of their business, by local police and other peace officers of Atlantic City or Atlantic County; the true amounts paid, to whom and for whom paid, and during what periods in the years 1932 to 1937, inclusive;

(d) whether one Harry Slott, also known as "Slotti" (deceased), received and collected from said proprietors of houses of prostitution or their employees money or envelopes for any purpose during the years 1932 to 1935, inclusive; and whether the said Harry Slott delivered such money or envelopes to one Raymond R. Born;

(e) whether one James J. McCullough, also known as "Mac," received and collected from said proprietors of houses of prostitution or their employees money or envelopes for any purpose during the years 1933 to 1936, inclusive; and whether the said James J. McCullough delivered such money or envelopes to said Raymond R. Born;

(f) whether one George Whitlock, also known as "Legs," received and collected from said proprietors of houses of prostitution or their employees money or envelopes for any purpose during the years 1936 and 1937; and whether the said George Whitlock delivered such money or envelopes to said Raymond R. Born;

(g) whether Raymond R. Born, political leader of the Third Ward, and Undersheriff of Atlantic County, New Jersey, gave permission to said proprietors of houses of prostitution to conduct such businesses and assured them of protection against raids, arrests or other molestation in the conduct of their business, by local police or other peace officers of Atlantic City or Atlantic County;

(h) whether, on October 27, 1937, or at any other time, the said May Harris went to the Federal Building in Trenton, New Jersey, and then and there told and informed Special Agents A. Dickstein, E. R. Davis and J. L. Brennan that in May of 1932 she went to Ray Born's home in her car in the Inlet District of Atlantic City, New Jersey, and said to Ray Born: "Everybody is open; how about me? I am back in 219; shall I turn on my lights?"; that before she left she said to Ray Born, "Shall I have to see you?", to which he replied, "Someone will come to you"; that immediately after her visit with Ray Born in his house, a man came to her place and told her he was the man she would have to see; that at the time she did not know him but immediately after she knew he was Harry Slatty (Slott); that he told her she would have to come to his place on Kentucky Avenue and that she went there every week and left \$100 with him; that she did this because of her understanding in connection with the conversation she had with Ray Born in his cottage in the Inlet District; that in the spring of 1933 she wished to open a house of prostitution at 209 North North Carolina Avenue, Atlantic City and that she went to Enoch L. Johnson's apartment in the Ritz-Carlton Hotel to see Louis Kissel; that she said to Louis Kissel: "I know that Nuck is in here so please let me talk to him," and that Lou said: "Come in the room and sit down and wait"; and that while she was waiting in the room "Nuck" Johnson came in and she talked to him about what she wanted; that she said to "Nuck": "Will it be all right? I would like to bring my sister back and I would like to open up 209 for her," and that "Nuck" said to her: "You wait here for Lou and you talk it over with

Lou and whatever Lou tells you to do will be all right"; that she opened a house of prostitution at 29 North Michigan Avenue and that she was ordered to close after being open only a few days; that she went to see Ray Born at Turner Hall and after some effort was able to contact him on the telephone and demanded that he wait at Turner Hall until she got there; that when she saw him she said: "I don't know who is the cause, I don't care who is the cause, I am tired of being tossed around; why should I be closed and why should these niggers get all of a sudden so particular? I am satisfied that 15 North Michigan is the cause and if I don't open those women better get

closed up"; and that Ray Born said: "Go on hom'; don't get excited; I am trying to straighten you out"; that shortly after her house and "Poppy's" house were allowed to open in the summer of 1936 this collector, Jimmie McCullough, stopped coming but instead another man, George Whitlock, also known as "Legs," came around to collect;

5. That on the 17th day of October in the year 1939, at the City of Newark aforesaid, in the County, State, and District aforesaid, and within the jurisdiction of this Court, the said May Harris, alias Kitty Harris, being so duly sworn as aforesaid, contriving and intending to pervert the true course of justice before the said Grand Jury and upon the said inquiry, and touching and concerning the material matters and the truth of the material matters so being inquired of by the said Grand Jury, upon and contrary to her said oath, falsely, wickedly, maliciously, corruptly, wilfully, and feloniously, not believing the same to be true and well knowing the same to be untrue, did answer, testify, declare, depose, and swear, among other things, in substance and to the effect following (said questions then and there being propounded by Joseph W. Burns and the answers hereinafter set forth being given by said May Harris):

Q. Now, in October 1937, or thereabouts, did you say to agents Dickstein, Brennan, and Davis or any of those three that in May of 1932 you went to Ray Born's home in your car in the Inlet District of Atlantic City, N. J.; that you said to Ray Born, "Everybody is open; how about me? I am back in 219; shall I turn on my lights?" Did you say that to the agents?

A. I couldn't have; I was closed in 1932.

Q. Well, did you say this to the agents, that at the time you did not know his name, but immediately after you knew he was Harry Slottery, he told you that you would have to come to his place, he gave you the address, that you went on every Monday to his little store on Kentucky Avenue and left with him \$100 a week?

A. I don't seem to remember me being in that store over once or twice, but I have been in that store.

Q. The question is did you tell that to the agents?

A. I might have had; I don't remember; I might have had.

Q. Well, is it the truth that you did go to Kentucky Avenue?

A. I did go to Kentucky Avenue two or three times.

Q. Did you say this to the agents, that you went to Kentucky Avenue because of your understanding in connection with the conversation you had with Ray Born in his cottage in the Inlet District?

A. No. This man told me to go to his office, to his place, his store; it was this man himself that told me. I had seen the man.

Q. Well, did you go to Johnson's apartment in the Ritz Carlton at any time to see Lou Kissel?

A. To see Lou Kissel himself?

Q. Yes.

A. No.

Q. Did you tell the F. B. I. agent in 1937 that you had gone to Johnson's apartment in the Ritz Carlton to see Lou Kissel?

A. No; the F. B. I. agents was trying to tell me that I had.

Q. You didn't say that to them?

A. No.

8. Q. Did you say to the F. B. I. agents that you went to the Ritz Carlton in reference to 209 and said to Lou, "I know that Nuck is in here so please let me talk to him," and that Lou said, "Come in the room and sit down and wait," and that while you were in the room waiting, Nuck Johnson came in and you talked to him about what you wanted; that you said to Nuck, "Will it be all right? I would like to bring my sister back and I would like to open up 209 for her" and that Nuck said to you, "You wait here for Lou and you talk it over with Lou and whatever Lou tells you to do will be all right?" Did you tell that to the F. B. I.?

A. I don't remember no such conversation, because if I wanted to bring my sister back, it seems to me this very second that the proper person to have that conversation would be to the man that took my money.

Q. Well, did you say this to the agents after you talked about the colored attorney and the colored people, that within a few days you went to see Ray Born at Turner Hall, and after some effort was able to contact him on the telephone and demanded that he wait at Turner Hall until you got there; that a few minutes later you saw him and said, "I don't know who is the cause, I don't care who is the cause, I am tired of being tossed around; why should I be closed and why should these niggers get all of a sudden so particular? I am satisfied that 15 North Michigan is the cause and if I don't open those women better get closed up and that Ray Born said, "Go on home; don't get excited; I am trying to straighten you out." That the next day the lights at 15 North Michigan Avenue were out. Did you say that to the F. B. I. agents?

A. I was never in Turners Hall.

Q. Did you tell the agents that you were in Turners Hall?

A. Why would I tell the agents about something that I didn't do?

9 Q. I am asking if you did.

A. I couldn't have. I have never been in Turners Hall.

Q. You didn't tell that to the agents?

A. I couldn't have; I don't see how I could.

Q. Did you tell the agents that you had this conversation with Ray Born?

A. I didn't have a conversation with Ray Born.

Q. Did you tell the agents that you had that conversation with Ray Born?

A. I don't see how I would. I wouldn't tell the F. B. I. agents something that didn't happen to be effective about it. I have never been in Turners Hall; why would I tell them that I had been?

Q. Did you say this to the agents, that shortly after your house and Poppy's house were allowed to open in the summer of 1936 a young man who you were told by the agents was James McCullough, but whose name you did not know at the time, came to your house; that you recognized him as being a man whom you had seen at Slotty's place on North Kentucky Avenue when you previously made payments there for your houses on North North Carolina Avenue; that this young man said to you, "Do you want to see me today?" That you said, "I will see you Sunday and every Sunday; I prefer Sunday." Did you say that to the agents?

A. Couldn't of. The first time that I saw this boy that you all call McCullough was right here in this hall outside of this door this last month some time.

Q. Well, now, on—

A. I have never known his name; when I went to the bank I didn't know his name.

Q. Now, in Trenton, N. J. in October 1937 at a time when the F. B. I. agents were questioning you, didn't they bring in or didn't they show to you this same James McCullough whom you say you knew from the bank and whom you saw in this post office in Newark, and didn't you at that time say that you recognized him as being the same man that collected the money?

10 A. In Trenton, New Jersey, Mr. Burns?

Q. Will you answer the question?

A. Yes; I am going to answer you if you will let me. In Trenton, N. J., they showed me a man, they showed me many men, this particular man that they showed me, that I said looked like this McCullough afterwards at Camden, N. J., at the trial turned out to be Agnes Stein's chauffeur. This boy McCullough when he was finally proved to me who he was, was in this build-

ing here outside of that door, and it was not the man they showed me in Trenton. I never knew this boy only from that bank.

Q. Well, do you deny that those agents showed to you—

A. They showed me many men, but they didn't show me this same boy; no; they did not.

Q. You deny that the agents showed to you the same James McCullough that you were shown by the agents in this building?

A. They might have shown me him in those halls; there were many, many men.

Q. Didn't you tell these agents on October 27, 1937, or if you don't remember the date, didn't you tell the agents about that time that you recognized James McCullough as a man who collected the money?

A. I told them that this man that I thought looked like the man I had seen in this man's office—after that I discovered that it was not the man and it was this woman's driver. In this hall here when they really showed me the boy, then it was not the man I saw in Trenton.

Q. Did you tell the F. B. I. agent in Trenton in 1937 that in about the fall of 1936 the collector who you then knew, that is in 1937, knew as Jimmy McCullough, stopped coming but instead another man came to you known as George Whitlock, also known as Legs; that he came to 29 North Michigan and
11 said to you, "I am the fellow; the little fellow won't come here any more." That you said, "All right, I will see you Sunday." Did you say that to the F. B. I. agents?

A. Why, I couldn't of. I never give my money to no little fellow. I gave my money to Legs. I didn't know his name until they have established that since.

6. And the grand jurors aforesaid, upon their oaths aforesaid, do say that the said, "May Harris, alias Kitty Harris, at the said City of Newark, in the County, State, and District aforesaid, at the times she made the statements aforesaid, then and there well and fully knew that they were, as a matter of fact, false and untrue in that, and for the reason that, May Harris aforesaid then and there well and fully knew that she did in fact tell and inform the said 'Special Agents, A. Dickstein, E. R. Davis, and J. L. Brennan that she had gone to Ray Born in 1932 and talked to him about opening a house of prostitution at 219 North Carolina Avenue; that she had spoken to Lou Kissel at the Ritz Carlton Hotel and at 110 South Iowa Avenue in Atlantic City, New Jersey; that she had paid money to said James McCullough and had spoken to Ray Born after her place was closed at 29 North Michigan Avenue."

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided.

JOHN J. QUINN,
John J. Quinn,
United States Attorney.

A true bill:

WM. I. REED,
Foreman.

[File endorsement omitted.]

12 In United States District Court, District of New Jersey

[Title omitted.]

Notice of motion to quash indictment

Filed Jan. 16, 1940

TO: JOHN J. QUINN, UNITED STATES DISTRICT ATTORNEY FOR THE DISTRICT OF NEW JERSEY.

Take notice that on Tuesday, January 16, 1940, at the United States District Court in the Post Office Building, Camden, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall move before the Honorable John Boyd Avis, Judge of said United States District Court, for an order quashing the indictment in the above-entitled cause on the ground that the same does not charge an offense against the United States.

Very truly yours,

GEORGE R. SOMMER,
George R. Sommer,
Attorney for Defendant.

[File endorsement omitted.]

14 In United States District Court, District of New Jersey

On Indictment. 8911b. On motion of Defendant to Quash

UNITED STATES OF AMERICA

vs.

MAY HARRIS, ALIAS KITTY HARRIS, DEFENDANT

George R. Sommer, for th motion.

John J. Quinn (United States Attorney), Joseph W. Burns (Special Assistant U. S. Attorney), opposed.

Opinion

Filed Feb. 14, 1940

Avis, District Judge: Defendant, through her attorney, moves to quash the indictment returned in this case, upon the ground that it does not charge an offense against the United States.

The indictment charges the defendant with having committed perjury in violation of the statute, 18 U. S. C. A., sec. 231.

The specific charge is that defendant, on October 17, 1939, was called as a witness before the United States Grand Jury for the District of New Jersey, at Newark, duly sworn, and gave certain testimony, and was particularly interrogated as to statements made to F. B. I. agents in 1937. The defendant denied categorically that these alleged statements were made by her.

The allegation of the indictment is that—

15 "May Harris, alias Kitty Harris, at the said City of Newark, in the County, State and District aforesaid, at the times she made the statements aforesaid, then and there well and fully knew that they were, as a matter of fact false and untrue in that, and for the reason that, May Harris aforesaid then and there well and fully knew that she did in fact tell and inform the said Special Agents, A. Dickstein, E. R. Davis, and J. L. Brennan that she had gone to Ray Born in 1932 and talked to him about opening a house of prostitution at 219 North North Carolina Avenue; that she had spoken to Lou Kiesel at the Ritz Carlton Hotel and at 110 South Iowa Avenue in Atlantic City, New Jersey; that she had paid money to said James McCullough and had spoken to Ray Born after her place was closed at 29 North Michigan Avenue."

The Government, by its Attorney, admits and states that its case is based entirely upon the fact that defendant, as a witness before the Grand Jury, denied that she made certain statements to the agents, whereas in fact she did make such statements. In other words, the Government insists that the indictment should be upheld, although no direct proof of the falsity or truth of the testimony given before the Grand Jury is available, except the testimony of agents who will testify that, at a prior meeting, the defendant told them as facts, the statements contained in the questions submitted to defendant before the Grand Jury.

Counsel for defendant claims that under such an allegation the indictment cannot be sustained; that to allege or prove perjury it must be shown that the substance of the statements of defendant were untrue in fact, and that defendant cannot be convicted of perjury because her sworn testimony was in conflict with an alleged statement made by her on a former date.

Undoubtedly at the time the testimony was given the Grand Jury was regularly convened and the witness duly sworn, or so it is alleged in the indictment.

I am satisfied that, under the terms of the indictment, 16 the questions asked of defendant were material to the issue there being investigated.

Perjury is a serious offense, and a person who commits perjury is entitled to severe condemnation. The courts and other bodies depending upon facts for adjustment of controversies, or obtaining facts by investigation, are powerless to render proper determinations unless persons in testifying tell the truth to the best of their knowledge. However, by reason of the seriousness of the charge and its peculiar attributes, it is required that perjury be proven by the testimony of two credible witnesses, or one credible witness with corroboration, or circumstances sustained by clear and convincing proof.

While there are some cases which appear to be to the contrary, I am satisfied that the allegations in an indictment necessary to show the commission of the offense must charge that the testimony given was untrue in fact, and that perjury cannot be predicated upon a contrary statement made by the witness at a time prior to or after the making of the sworn statement, notwithstanding the claim that the witness on her oath denied that she made such statements, which, it is averred, can be proven by two or more credible witnesses.

In the case of Clayton v. United States, 4 Circ. 284 F. 537, the court said on page 540:

"In the case at bar no attempt was made to prove by 'positive and direct evidence' that defendant made false answers to the first two questions set out in the indictment, namely, whether he had procured any intoxicating liquor from any person during the period named, and whether he had had any intoxicating liquor in his possession during that period. Indeed, the only evidence in support of these assignments is the testimony of two witnesses as to what defendant had told them in private conversation some time before the grand jury met. This was quite insufficient, for the falsity of a sworn statement is not shown by proof of 17 an unsworn contradictory statement. In view of the strong presumption of innocence, and because of the solemnity of an oath, credit must be given to what defendant said under oath, rather than to what he may have said to the contrary when not under oath. Billingsley v. State, 49 Tex. Cr. R. 620, 95 S. W. 520, 13 Ann. Cas. 730, 21 R. C. L. 272; 30 Cyc. 1455; Wharton's Crim. Ev. sec. 387."

In Phair v. United States, 60 F. 2d 953, the Circuit Court of Appeals for the Third Circuit, in a case appealed from a judg-

ment rendered in the District Court of the United States for the district of New Jersey, established the same principle.

In that case Phair was alleged to have subscribed and sworn to an affidavit with relation to the ownership of a certain saloon wherein intoxicating liquor was kept and sold. In the affidavit he denied ownership. It was charged that later in another proceeding Phair admitted ownership. There was some question as to whether the admission referred to the exact property referred to in the affidavit, but, however that may be, the court stated the law applicable to the instant motion as follows on page 954:

"But assuming that Mr. Cohen, and not the other witnesses, correctly stated what Phair said, it simply amounts to an affidavit on the one side and contrary oral statements by the same person on the other. The affidavit and the later statements cannot both be true, and which one is true is unknown, for there are no corroborating circumstances sufficient to establish the truth of the statements contradicting the affidavit.

"At most, there was an oath on the one side, and conflicting testimony as to what Phair later said contrary thereto, on the other, without sufficient attending circumstances. If all three witnesses had unequivocally testified that Phair later flatly denied the truth of the statements made in his affidavit, the result would have been an affidavit by Phair and a subsequent denial of it by him. All that the testimony of the three witnesses amounts to is the establishment of a denial by Phair of his affidavit, and the mere denial of the truth of the affidavit is not sufficient to sustain the charge of perjury."

18 The case of United States v. Golan, D. C., 24 F. Supp. 523, decided by Judge Maris, then Circuit Judge, but determining a motion for a new trial in a case in which he had sat as a District Judge, held as follows on pages 523-4:

"Turning to a consideration of the common law of Pennsylvania I find it to be settled that two or more contradictory statements of a defendant standing alone will not sustain a charge of perjury. Com. v. Bradley, 109 Pa. Super. 294, 167 A. 471. Before a defendant may be convicted upon his admission that a prior statement under oath was false it is necessary to establish the corpus delicti, that is, the falsity of the defendant's prior sworn statement. Com. v. Haines, 130 Pa. Super. 196, 196 A. 621.

"In the present case the Government offered evidence proving that the defendant gave the testimony and made the affidavit in his naturalization proceeding which it contended were false. It then offered in evidence certain admissions by the defendant

that this testimony and affidavit were false. No other evidence as to their falsity was produced, however, and I submitted the case to the jury upon the contradictory statements of the defendant alone and over his objection that the corpus delicti had not been proved. I am satisfied that this was error and that I should have sustained the defendant's motion for a directed verdict of not guilty."

These cases are convincing as to the rule established in this Circuit, and it is my duty to follow the rule so established.

The Government relies mainly upon two cases: The first, *O'Brien v. United States*, C. A. D. C., 99 F. 2d 368. While it is true in that case the court sustained a conviction based upon the making of contradictory statements, the question as to whether that constituted perjury was not raised or decided. The first question decided was whether the statement, made by defendant, which constituted the proof of perjury had been procured by promises and threats. The second, an alleged commission of error by the trial court in permitting the stenographer who recorded the original statement to read to the jury those 19 parts of it which proved the defendant's commission of other criminal offenses; and the third related to the imposition of sentence, as to whether defendant should have been sentenced under the District of Columbia Code or the Federal Penal Code. It is not a precedent for the contention. Petition for writ of certiorari to the Supreme Court was filed, including a motion to proceed in forma pauperis, which motion was denied (see 305 U. S. 562). Apparently no further proceedings were taken in the Supreme Court.

The second case is *Behrle v. United States*, C. A. D. C. 100 F. 2d 714. That case seems to be exactly in point, following the doctrine established in the case of *People v. Doody*, 172 N. Y. 165, 64 N. E. 807.

In both of these cases the courts apparently relied upon the principle that perjury can be proved by so-called circumstantial evidence. I cannot believe that the courts can make new law on this subject, when for so many years it has been held otherwise.

The motion to quash will be granted.

[File endorsement omitted.]

In United States District Court, District of New Jersey

On Indictment. 8911b

UNITED STATES OF AMERICA

vs.

MAY HARRIS, ALIAS KITTY HARRIS, DEFENDANT

Order quashing indictment

Filed March 18, 1940

The above entitled cause having been opened to the Court on the motion of George R. Sommer, Esquire, appearing for and on behalf of the defendant May Harris to quash the indictment, and Joseph W. Burns, Special Assistant United States Attorney for the District of New Jersey, having appeared for and on behalf of the United States of America; and,

The Court having heard and considered the arguments of counsel and having determined that the indictment does not charge an offense under the statute;

It is, therefore, ordered that the said indictment be quashed.

JOHN BOYD AVIS;

Judge, United States District Court.

Entered this 18th day of March 1940.

21 In United States District Court, District of New Jersey

[Title omitted.]

Petition for appeal

Filed March 20, 1940

Comes now the United States of America, plaintiff herein, and states that on the 18th day of March, 1940, the District Court for the District of New Jersey sustained a motion of the defendant to quash the indictment herein, and the United States of America feeling aggrieved at the ruling of said District Court in sustaining said motion to quash, prays that it may be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record in this cause, duly authenticated, may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,

JOHN J. QUINN,

United States Attorney for the District of New Jersey.

JOSEPH W. BURNS,

Special Assistant to the United States Attorney.

[File endorsement omitted.]

22 In United States District Court, District of New Jersey

[Title omitted.]

Assignments of error

Filed March 20, 1940

Comes now the United States of America, by John J. Quinn, United States Attorney for the District of New Jersey, and avers that in the record proceedings and judgments herein there is manifest error and against the just rights of the said plaintiff in this, to wit:

1. That the court erred in quashing the indictment.
2. That the court erred in holding that the indictment did not charge an offense under the Perjury Statute.
3. That the court erred in holding that a false denial under oath by a witness before a grand jury that she had theretofore made certain statements to Government agents did not constitute a violation of the Perjury Statute, even though the fact that she had made the statements was material to the Grand Jury's inquiry.

JOHN J. QUINN,

United States Attorney for the District of New Jersey.

JOSEPH W. BURNS,

Special Assistant to the United States Attorney.

[File endorsement omitted.]

23 In United States District Court, District of New Jersey

[Title omitted.]

Order allowing appeal to the Supreme Court of the United States

Filed March 20, 1940

This cause having come on this day before the Court on Petition of the United States of America, plaintiff herein, praying an

appeal to the Supreme Court of the United States for a reversal of the judgment sustaining a motion of the defendant to quash the indictment in said cause, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said motion, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the Court, Ordered and Adjudged that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this Court, in sustaining the motion of the defendant to quash the indictment, to the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court.

It is further Ordered that the United States of America be, and it is hereby, permitted a period of forty days in which to file and docket said appeal in the Supreme Court of the United States.

Dated at Camden, New Jersey, this 20th day of March 1940.

By the Court:

JOHN BOYD AVIS,

United States District Judge for the District of New Jersey.

[File endorsement omitted.]

24 In United States District Court, District of New
Jersey

[Title omitted.]

Praeceptum for Transcript of Record

Filed April 3, 1940

TO THE CLERK, UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF NEW JERSEY:

The appellant hereby directs that in preparing the transcript of the record in this cause in the United States District Court for the District of New Jersey in connection with its appeal to the Supreme Court of the United States you include the following:

1. Indictment.
2. Notice of and motion to quash.
3. Opinion.
4. Judgment sustaining motion to quash.
5. Petition for appeal to the Supreme Court.
6. Statement of jurisdiction of Supreme Court.
7. Assignments of error.
8. Order allowing appeal.

9. Notice of service on appellee of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.

10. Citation.

11. Praecept.

(Signed) JOHN J. QUINN,
United States Attorney for the District of New Jersey.
 JOSEPH W. BURNS,
Special Assistant to the United States Attorney.

Service of the foregoing Praecept for Transcript of Record is acknowledged this 25th day of March 1940.

(Signed) GEORGE R. SOMMER,
Attorney for defendant.

26 [Citation in usual form showing service on George R. Sommer, filed April 23, 1940, omitted in printing.]
 27 [Clerk's certificate to foregoing transcript omitted in printing.]

28 In Supreme Court of the United States

Statement of points to be relied upon and designation of record

Filed April 27, 1940

Pursuant to Rule XIII, Paragraph 9, of this Court, appellant states that it intends to rely upon all of the points in its assignment of errors.

Appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

FRANCIS BIDDLE,
 Francis Biddle,
Solicitor General.

APRIL 20TH, 1940.

Service of the above Statement of Points and Designation of Record acknowledged this 22 day of April 1940.

GEORGE R. SOMMER,
Counsel for Appellee.

[File endorsement omitted.]

[Endorsement on cover:] File No. 44312. NEW JERSEY, D. C. U. S. Term No. 905. The United States of America, Appellant, vs. May Harris, alias Kitty Harris. Filed April 12, 1940. Term No. 905 O. T. 1939.